



Topic Introduction: Contractual Compliance

New gTLD Subsequent Procedures PDP WG – Track 2
25 May 2017

Explanation of the Subject

The base agreement and Registry Agreement contain contractual requirements that the registries must meet.

Principle E and Recommendation 17 from the 2007 Final Report provide the foundation for contractual compliance mechanisms related to registries.

As noted in section 5.4.2 of the AGB:

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations.

Questions and Concerns Related to the Subject

The Discussion Group raised no specific concerns on this topic, but noted that it could be in scope if concerns were raised in the Working Group.

Note that contractual compliance ensures that ICANN's contracted parties fulfill the requirements set forth in their agreement with ICANN. The PDP is not able to change this role.

Public comments included concerns about some operational practices, though they note that ICANN contractual compliance can only enforce that which is included in the Registry Agreement. Any new requirements for registries would need to be codified in an agreement to be enforceable.

Additional question: How much can one rely on representations made in an application? Were representations integrated into the signed Registry Agreement enough to be enforceable? Impact of change requests? This question touches other topic areas, such as application submission, evaluation, and contracting processes.

Principle E:

A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.

Recommendation 17:

A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.

Rationale for Policy Development

Since the Discussion Group identified no specific concerns, policy development is not anticipated on this topic.

Public comments identified concerns around applicant representations in their applications, the reliance the community can place on those representations, and how those representations are ultimately integrated into the Registry Agreement.

These concerns may be best addressed through recommendations related to the application submission and evaluation processes, as well as potentially translating those representations in contractual requirements, as changing the role of contractual compliance is considered outside the remit of a GNSO PDP-WG.